

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Appropriate Framework for Broadband)	CC Docket No. 02-33
Access to the Internet over Wireline Facilities)	
)	
Universal Service Obligations of Broadband)	
Providers)	
)	
Computer III Further Remand Proceedings:)	CC Dockets Nos. 95-20, 98-10
Bell Operating Company Provision of)	
Enhanced Services; 1998 Biennial Regulatory)	
Review – Review of Computer III and ONA)	
Safeguards and Requirements)	

REPLY COMMENTS OF COMCAST CORPORATION

Comcast Corporation (“Comcast”) hereby responds to the comments filed by other parties regarding the regulatory treatment of wireline broadband services and concerning a potential expansion of universal service contribution obligations to providers of broadband Internet services. As to the wireline regulation issues, the comments provide substantial support for Comcast’s views that: (i) the Commission should carefully distinguish between the ILECs’ Internet access services and their underlying telecommunications services; (ii) the ILECs’ Internet access services are and should remain unregulated information services; and (iii) the use of Title I powers to impose common carrier-like requirements raises extremely serious concerns. As to the universal service issues, the record provides ample reason for the Commission not to extend contribution requirements to providers of broadband Internet access services. As shown by Comcast and others, this proposal presents serious public policy ramifications that are highly

problematic when considered in isolation, but are in any event ill-suited for resolution in the present proceeding due to the unsettled nature of many other universal service issues.

I. Changes in Wireline Regulatory Classifications and Regulations Should Be Considered with Great Care.

The initial comments reflect a widespread consensus that, in the context of services provided over the infrastructure of the traditional telephone network, the Commission should carefully distinguish between Internet services (including Internet access services) and the underlying telecommunications services.¹ As to Internet services and Internet access services, there is near-universal agreement that these are already unregulated information services,² and that no change in classification or regulatory treatment is required.³

As to DSL services, there is widespread agreement that these are currently Title II telecommunications services.⁴ Comcast expressly reserves comment on whether the current regulatory treatment of DSL should change.⁵ A significant number of parties noted that, to the

¹ Allegiance Comments at 3, 11-15, 34; AT&T Comments at 2-13; Business Telecom Comments at 4-5, 8; Comcast Comments at 5-6; DSLNET Comments at 5, 13-16; Florida PSC Comments at 8; NYDPS Comments at 3.

² AT&T Comments at 14; AOL Time Warner Comments at 3, 5, 8, 12; Comcast Comments at 4-5; ITAA Comments at 9; NewSouth Comments at 6-7; Time Warner Telecom Comments at 1-2.

³ AOL Time Warner Comments at 3; AT&T Comments at 5-6; Comcast Comments at 4-5; Time Warner Telecom Comments at 1-2. We note that some commenters have requested that the Commission create a completely new classification, and a new regulatory regime to go with it, for broadband services. *E.g.*, US Internet Indus. Assoc. Comments at 8; US Internet Assoc. Comments at 1. Such proposals are more appropriately directed to Congress than to the FCC. As it happens, this is a proposal that Congress has already considered and rejected. *See* Comments of Comcast Corporation, GN Docket No. 00-185 at 20 (Dec. 1, 2000) (discussing Commerce Department's proposed "Title VII" approach).

⁴ AOL Time Warner Comments at 14; AT&T Comments at 6; KMC Telecom and Nuvox Comments at 4-12 (both the Commission and the courts have so held); NewSouth Comments at 6-9; NYDPS Comments at 4-5 ("ILECs are required to offer the transmission component of their information services separately, pursuant to tariff, and must also acquire such transmission for their own information service offerings pursuant to that tariff"); US LEC Comments at 9-10.

⁵ The Commission has quite rightly recognized that this issue can and should be considered separately from issues associated with high-speed cable Internet service. *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling, GN Docket No. 00-185 and CS Docket No. 02-52, 17 FCC Rcd. 4798, 4823 (2002) ¶ 39 ("Cable Internet Declaratory Ruling").

extent the Commission wishes to deregulate ILEC services, it can more appropriately do so using the forbearance tool that Congress has fashioned.⁶

From Comcast's perspective, the most important issue in this part of the proceeding concerns the potential use of the Commission's Title I powers. Regardless of what the Commission decides regarding the regulatory classification of DSL, it should be extremely cautious in exercising its Title I powers. To take services out from Title II regulation and then craft similar, but different, requirements under Title I would be a departure from past practice⁷ and of questionable legality;⁸ it would allow the Commission to expand, contract, or otherwise alter the requirements and limitations that Congress carefully established.⁹ In addition, it would not show the proper respect to Congress for the Commission to use Title I as a basis to "freelance," establishing requirements without regard for the judgments reflected in the Telecommunications Act of 1996.

The Commission should be especially cautious about using Title I powers to regulate *information services*.¹⁰ As a number of parties have rightly noted, the Commission's long-standing deregulatory approach to information services has permitted those services -- and the

⁶ Allegiance Comments at 5; Assoc. of Comm. Enter. Comments at 31; AT&T Comments at 23; Calif. PUC Comments at 15-16; CBeyond Comments at 5, 38-39; Cinergy Comments at 3; Comcast Comments at 7 n.16; Time Warner Comments at 4, 17, 29-32; Ohio PUC Comments at 26; Nat'l Rural Tel. Assoc. Comments at 13; US LEC Comments at 3, 19; Western Alliance Comments at 9. *See also* NewSouth Comments at 22-23 (definitional changes would constitute an impermissible attempt to forbear).

⁷ CBeyond Comments at 37; NewSouth Comments at 16-17; US LEC at 17-18.

⁸ *E.g.*, US LEC Comments at 18; WorldCom Comments at 78-83. Even in instances where the Commission has explicit statutory authority, the Commission has discovered that its actions pursuant to that authority are routinely subjected to intense and highly critical judicial scrutiny. *E.g.*, *U.S. Tele. Assoc. v. FCC*, 290 F.3d 415 (D.C. Cir. 2002). Thus, it is particularly important that the Commission be circumspect about adopting regulations that have *not* been authorized by Congress.

⁹ NewSouth Comments at 16-17, 22-23. The issues resolved in the Telecommunications Act of 1996 were debated intermittently for nearly 20 years, beginning with the "Consumer Communications Reform Act" in 1976.

¹⁰ *E.g.*, CBeyond Comments at 5; Comcast's initial comments in this proceeding cited numerous statements and speeches in which precisely this view was articulated by now-Chairman Powell. Comcast Comments at 4, 10 n.21, 11, 20 n.51, 28 n.82.

Internet -- to flourish.¹¹ The 1996 Act not only ratified that approach but emphatically established a national policy of allowing Internet and other interactive services to remain “vibrant and competitive . . . , unfettered by Federal or State regulation.”¹² Title I should *not* be used to undo this progress or this policy.¹³

II. The Commission Should Not Use This Proceeding To Impose a Universal Service Contribution Requirement on Facilities-Based Providers of Broadband Internet Access Services.

The first-round comments provide abundant reasons why the Commission should reconsider its proposal to expand universal service contribution requirements. As NCTA suggested, changes to the contribution base should be vetted in a comprehensive proceeding, rather than as a result of a brief discussion appended to an *NPRM* that is primarily focused on other issues.¹⁴ But such a comprehensive and thorough review is beyond the scope of the present proceeding.¹⁵ Before such a review can take place, the Commission must first finish certain proceedings and resolve key policy issues.

The following are outstanding universal service proceedings that must be taken into account¹⁶:

¹¹ AOL Time Warner Comments at 12-13; CBeyond Comments at 40-41; Comcast Comments at 10-12; ITAA Comments at 28-30; KMC Telecom and Nuvox Comments at 20-22; NewSouth Comments at 17; WorldCom Comments at 44.

¹² 47 U.S.C. § 230(b)(2).

¹³ Comcast has presented detailed legal and policy arguments against Title I regulation of information services, and Internet offerings in particular, in the cable Internet proceeding. *See* Comments of Comcast Corporation, MB Docket No. 02-52 at 15-27 (June 17, 2002).

¹⁴ NCTA Comments at 4.

¹⁵ Comcast Comments at 14-18; Illinois Commerce Commission Comments at 33 (revamping the universal service contribution mechanism should be addressed in a different forum); NCTA Comments 4 (the Commission should address any and all proposals to increase the contribution base in one comprehensive proceeding).

¹⁶ Comcast notes that the Commission also intends to initiate additional proceedings this year to address other issues fundamental to universal service policy, *e.g.*, a proceeding to look at the universal service support by competitive industry providers whose costs may differ from those of incumbent LECs, and an examination of the comparatively different rural and non-rural support mechanisms. *The Future of Universal Serv.: Ensuring the Sufficiency and Stability of the Fund: Hearings Before the Subcomm. on Communications of the Senate Committee*

- the proceeding to define certain Communications Act terms that will impact consumer rates and contribution mechanism amounts in support of telephone service provided in high-cost areas;¹⁷
- consideration of possible extension of high-cost and low-income support to advanced or high-speed services;¹⁸
- revisions to the schools and libraries universal support mechanisms, including possible changes to rules on funding Internet access services bundled with content;¹⁹
- changes to the framework for provision of support to rural healthcare providers for Internet access;²⁰ and
- a potential shift from a percentage-of-revenue contribution base to a connection-based regime.²¹

There are also additional critical policy questions raised by the particular scope of the universal service contribution requirements proposed here.²² For instance, the proposal presented here requires the Commission to consider at a minimum: (1) whether an entity that *uses* telecommunications can properly be deemed to *provide* telecommunications when it only offers an information service;²³ (2) whether a defensible line can be drawn between “broadband”

on Commerce, Science and Transportation, 107th Cong., 2nd Sess. (2002) (statement of Dorothy T. Attwood, Chief, Wireline Competition Bureau, Federal Communications Commission).

¹⁷ *Federal-State Joint Bd. on Universal Serv.*, Notice of Proposed Rulemaking, CC Docket No. 96-45, 17 FCC Rcd. 2999 (2002). The Commission’s decision in this proceeding will impact the rates charged to consumers in rural, insular, and high-cost areas and the funding mechanisms supporting those rates. Comcast Comments at 15; NCTA Comments at 4.

¹⁸ *Federal-State Joint Bd. on Universal Serv. Seeks Comment on Review of the Definition of Universal Serv.*, Public Notice, CC Docket No. 96-45, 16 FCC Rcd. 16155, 16157 (2001); see Comcast Comments at 15; NCTA Comments at 4.

¹⁹ *Schools and Libraries Universal Serv. Support Mechanism*, Notice of Proposed Rulemaking, CC Docket No. 02-6, 17 FCC Rcd. 1914, 1924-25 ¶¶ 23-25 (2002); see Comcast Comments at 15-16; NCTA Comments at 4.

²⁰ *Rural Health Care Support Mechanism*, Notice of Proposed Rulemaking, WC Docket No. 02-60, FCC 02-122 (rel. April 19, 2002); see Comcast Comments at 16; NCTA Comments at 4.

²¹ *Federal-State Joint Bd. on Universal Serv.*, Notice of Proposed Rulemaking, CC Docket No. 96-45, 16 FCC Rcd. 9892 (2001); see Calif. PUC Comments at 46; NCTA Comments at 3-4.

²² Comcast Comments at 18-31; NCTA Comments at 3-7.

²³ The Commission’s permissive authority under Section 254(d) extends only to those entities that “provide” telecommunications. 47 U.S.C. § 254(d); see Allegiance Comments at 66-67; Comcast Comments at 26-27. To the extent that the Commission concludes that those offering broadband services “provide” telecommunications to themselves, the Commission would need to explain why it would tax these entities but not other entities, *e.g.*, broadcasters and DBS providers, that arguably also provide telecommunications to themselves.

and non-broadband services;²⁴ (3) whether a defensible line can be drawn between facilities-based and non-facilities-based providers; (4) whether a defensible line can be drawn between Internet access service providers and providers of other communications (*e.g.*, broadcasting, DBS) and information services (*e.g.*, remote access data processing); and (5) whether the Commission may properly use Title I as a basis for imposing universal service contribution requirements.²⁵ As to each of these, there is – at a minimum – very substantial doubt. In addition, the Commission would also need to consider how to resolve the cost allocation issues raised by extending universal service contribution requirements to services that, at most, are only partially “telecommunications” but also have other capabilities and value added.²⁶

For all these reasons, the proposal to extend universal service contribution requirements to broadband providers of Internet services should be deferred from further consideration in this proceeding and, preferably, rethought and reformulated after the Commission has addressed other more pressing universal service issues.

CONCLUSION

There is broad consensus that the Commission should continue to distinguish between the ILECs’ Internet access services and their DSL services. Internet access is and should remain an unregulated information service. Title I should not be used to impose common carrier requirements either for services “taken out” of Title II regulation or, worse, for information

²⁴ AT&T Comments at 48-56; Comcast Comments at 29; Oregon PUC Comments at 2 (broadband is not sufficiently distinguishable from narrowband service to warrant separate regulatory treatment); Sprint Comments at 5-10 (*Computer II* is not confined to narrowband services).

²⁵ As previously indicated, the Commission has to date used its Title I authority in a limited manner and it should be particularly careful about using its Title I authority to re-impose Title II regulations (including universal service support obligations) on Title I service providers. Charter Comm. Comments at 16-17 (the Commission should not impose Title II regulations on cable operators in the information services market); Comcast Comments at 8-13, 19; ITAA Comments at 28-30.

services that have always been unregulated. With regard to the proposed expansion of the universal service contribution base, the record demonstrates that there are important proceedings that the Commission must first resolve before the Commission can thoroughly address this issue. When and if this issue is further considered, the record here shows that a proposal that would impose burdens uniquely on facilities-based, broadband, providers of Internet services is likely to be indefensible.

Respectfully Submitted,

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²⁶ Charter Comm. Comments at 28 (the Commission would need to engage in a cost allocation proceeding before imposing USF contributions on cable modem service operators); Ohio PUC Comments at 12-13; State Members of the Federal-State Board on Separations Comments at 4; Time Warner Comments at 3.